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**FILED ELECTRONICALLY
(VIA ECFS)**

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: MB Docket No. 05-317
KENS-DT, San Antonio, Texas (Facility ID No. 26304)
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

Pursuant to the Commission's Public Notice DA 05-2979,¹ and Section 339 of the Communications Act, as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"),² KENS-TV, Inc., the licensee of KENS-TV and permittee of KENS-DT, San Antonio, Texas ("the station" or "KENS"), hereby requests a waiver to prohibit satellite subscribers from receiving or conducting digital signal strength tests to demonstrate the eligibility of such subscribers to import distant digital network signals within the station's local service area. In support of said waiver, the following is shown.

KENS is a CBS network affiliate serving San Antonio, Texas. San Antonio is ranked number 37 in the top 100 television markets. The station has not received a tentative channel designation on its allotted digital channel. The station has also not been found by the Commission to have lost interference protection. Nevertheless, for the reasons set forth below, and in an abundance of caution, KENS-TV, Inc. submits this request for a waiver of the April 30, 2006 date upon which satellite subscribers *potentially* may request tests of KENS' digital signal strength.

Station KENS currently operates on NTSC channel 5 and out-of-core DTV channel 55. As a top four network-affiliated station in one of the nation's top 100 markets that will not remain on its current DTV allotment post-transition, KENS was subject

¹ See Public Notice, *TV Station Requests for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 to be Filed by November 30, 2005 or February 15, 2007*, DA 05-2979 (rel. Nov. 17, 2005).

² See 47 U.S.C. § 339 as amended by Section 204 of the SHVERA.

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to the Commission's July 1, 2005 replication/maximization interference protection deadline requiring that the station provide DTV service to 100% of the population served by its 1997 NTSC facility in order to maintain full interference protection for its allotted DTV service area. On June 30, 2005, KENS requested a waiver of the July 1, 2005 deadline. The waiver request is still pending.

The circumstances necessitating KENS' request for waiver of the replication/maximization deadline are as follows. The outstanding DTV construction permit for KENS authorizes operation with an ERP of 982 kW at a height above average terrain ("HAAT") of 424 meters on a tower located at coordinates 29-16-7 North Latitude, 98-15-55 West Longitude. *See* FCC File No. BPCDT-19991029ACS. In accordance with the FCC's "minimal facilities" policy, KENS commenced digital operations in April 2002 pursuant to special temporary authority ("STA") with an ERP of 29.4 kW at a HAAT of 445 meters at a nearby tower located at coordinates 29-16-11 North Latitude, 98-15-55 West Longitude. *See* FCC File No. BEDSTA-20041122AKG, as extended.

After commencing digital broadcasting, KENS-TV, Inc. decided that the STA facilities were more desirable for KENS' permanent operations and planned to simply increase the station's power to 982 kW by the replication/maximization deadline. In preparing to increase its power, however, KENS-TV, Inc. realized that it had inadvertently failed to modify its original DTV construction permit to conform it to the station's "as built" facilities. Accordingly, pursuant to the FCC's June 15, 2005 public notice regarding compliance with the July 1, 2005 replication/maximization interference protection deadline,³ KENS promptly filed an application on FCC Form 301 to modify its DTV construction permit consistent with the outstanding DTV freeze. *See* FCC File No. BMPCDT-20050627ABY. In order to comply with the DTV freeze, the Form 301 application specifies an ERP of 825 kW; otherwise, the facilities specified in the application are identical to those with which KENS is currently operating. As of this date, the Form 301 application remains pending, and is awaiting international approval from Mexico.⁴

³ *See* Public Notice, *DTV Channel Election Issues – Compliance with the July 1, 2005 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline*, DA 05-1636 (rel. June 15, 2005).

⁴ Pursuant to 47 U.S.C. §339(a)(2)(D)(viii) *as amended* by Section 204 of the SHVERA, the April 30, 2006 digital signal testing implementation date may be waived if a station's digital signal coverage is limited due to, among other things, the need for international coordination or approval.

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As soon as Mexican approval is obtained and KENS' modified DTV permit is issued, KENS-TV, Inc. intends to promptly implement the facilities specified therein and file an application for a license to cover the permit. In the interim, KENS is continuing to operate with the reduced power STA facilities referenced above.⁵

In the event that the FCC denies KENS' request for waiver of the replication/maximization deadline and the station loses interference protection as a result of such denial, it appears that under SHVERA, the station would become subject to requests by satellite subscribers for tests of the station's digital signal beginning April 30, 2006. Should this occur, and should KENS' Form 301 modification application continue to be pending on that date, KENS-TV, Inc. respectfully requests that the April 30, 2006 testing implementation date be waived for an initial term of six months so as to allow KENS sufficient time to obtain a grant of its modification application and implement the facilities specified therein.

This request is being filed electronically using the Commission's Electronic Comment Filing System. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



John M. Burgett

cc: Nazifa Sawez (*by USPS and e-mail*)

⁵ KENS-TV, Inc. has also filed to extend its current STA authorizing operation at 29.4 kW so as to cover the station's operations pending grant of the Form 301 modification application. The STA extension request remains pending.